

## Episode 55

### **A Discussion With the Shariah Board of Dar Al-Maal Al-Islami**

Anyway! Faysal Bank was the first financial institute with which I was associated. Later, I observed several flaws in the mode of operation of Maşraf Faysal, some of which were corrected at least in Bahrain. However, there were some other issues in which I differed with other scholar members of the Shariah Board. When I expressed my disagreement, it was said that Faysal Bank was in fact a subsidiary of another financial institute, “Dar Al-Maal Al-Islami”, under which several financial institutes were operating and which had its own larger Shariah Board. It was said that all financial institutes under "Dar Al-Maal Al-Islami" were bound to follow the resolutions passed by its Shariah Board, so if anyone disagreed with any of its resolutions, they would have to discuss them with the Shariah Board of “Dar Al-Maal Al-Islami”. This Shariah Board was headed by the former Mufti of Egypt Shaykh Khatir (may Allah have mercy on him), with Shaykh Yusuf Qaradawi, Shaykh Siddiq al-Dharir (may Allah have mercy on him), Dr Hussain Hamid Hassan, and from Pakistan Hadhrat Pir Karam Shah (may Allah have mercy on him) among its members.

Since “Dar Al-Maal Al-Islami” was headquartered in Geneva<sup>1</sup>, Switzerland, most of the meetings of its Shariah Board took place in Geneva. To present my stance before the Board, I thus undertook my second trip to Geneva. This was a difficult occasion for me, for before me was an assembly of senior scholars headed by the famous elderly scholar of Al-Azhar University, Shaykh Khatir (may Allah have mercy on him), and all other members were also much senior to me in age as well as experience, and I had to present my reasons for disagreeing on such issues over

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<sup>1</sup> It was ironic that Prince Muhammad bin Faysal was the Prince of Saudi Arabia, but when he decided to establish interest-free financial institutes, it was not possible for him to get a license in Saudi Arabia at that time. This is because getting a license for an Islamic financial institute would be a confession that other institutes were un-Islamic or interest-based, even though it had been acknowledged at a governmental level that the local banks were un-Islamic or interest-based. Interest was re-named to commission, etc. in those banks. They were therefore forced to base their institute in Switzerland. Alhamdulillah now the situation has changed in Saudi Arabia, with Islamic banks being able to acquire licenses, and several Islamic banks are operating there.

which they had all agreed. Anyway! I emboldened myself and presented my stance. I was pleased to note that they listened to my point of view with open hearts and did not outright reject it. Subsequently, some of my requests were accepted and some not. Shaykh Khatir (may Allah have mercy on him) possessed an awe-inspiring personality, but despite my young age, he greatly encouraged me on the scholarly points.

With regards to this, the most major flaw in my view was that in case of a contract of Murabaha Mu'ajjalah, if the buyer, who owes the cost price, cannot pay his dues by the appointed time, the bank would take an amount from him in the name of "*ta'wīd*" (compensation). The way of calculating the compensation was that if the bank had earned any profit in its investment account during the time that the buyer delayed paying his dues, the bank would take the corresponding amount from the buyer as compensation for the potential loss and include it in its own income. In other words, had the bank received the amount from the debtor on time and deposited it in its own investment account, it would have earned that much profit. Due to the debtor's late payment, it incurred a loss which was due to the debtor's not paying his dues on time, so he had to pay a compensation for this loss. In technical terms, this is called opportunity cost. In my view, there is no concept of opportunity cost of cash in Shariah, so this mode of operation was incorrect in my view and was similar to the *riba* of pre-Islamic times.

When I presented my stance, I was unsuccessful in changing their opinions at that time. They said: "In interest-based institutes, the interest meter would start running on a daily basis from the day someone delayed paying their dues. People are therefore careful to pay on time. On the other hand, if no extra amount is charged for late payments in interest-free banks, people would take advantage of this and not pay on time despite having the means. We therefore had to devise this principle of charging compensation for late payment. And this cannot be called interest because if someone were really not able to pay on time due to financial difficulties, the bank would not charge this compensation from them. Secondly, this is only charged if the bank earns a profit in its investment account in the duration that the debtor delayed payment. If the bank did not earn any profit, no compensation would be charged from the debtor."

In my view, this reasoning was incorrect for many reasons (I have described details of this in my article on “*Bay‘ Bi Al-Taqsīt*” which has been published in the first volume of my book “*Buḥūth Fī Qaḍāyā Fiqhiyyah Mu‘āṣirah*”) and I believed that the continued existence of this compensation would be a blemish on the face of interest-free banking. When I could not convince the individuals from “Dar Al-Maal Al-Islami”, I presented this topic in a meeting of the Islamic Fiqh Academy, so that collective deliberation on this topic in a meeting of global scholars could take place there. When this topic was discussed in those meetings, it was concluded based on almost unanimous opinion that collecting the aforementioned compensation is not permissible.

Nonetheless, the issue was certainly real and existent that people would misuse the lack of any deterrent for late payment and would make it a habit to delay payments, and in this way were causing continuous losses to interest-free organizations. To solve this problem, it was decided in a meeting of Majlis *Tahqīq Masā’il Ḥādirah* in Karachi that instead of collecting a compensation, the debtor would bind himself to paying a fixed amount in charity in case of late payment. Since this amount would not be part of the bank’s income, the bank would not gain any financial benefit through it, so this would not be interest. But this would act as an impetus for the debtor to pay his dues on time. This method is also lent support from the discussions of some Maliki scholars, details of which I have described in my aforementioned essay. From then onwards, the collection of a compensation by interest-free banks ceased, and even those scholars who previously supported the concept of collecting a compensation no longer insisted on its collection.

Based on my impression, the Karachi Branch of Faysal Bank worked correctly for some time, but then some flaws cropped up, and I spent so much time in trying to redress them that I have perhaps not spent so much time for any other organization. Regrettably, I was unsuccessful in rectifying them. Numerous changes occurred in the bank’s management, each of whom would promise to amend the flaws and I would have lengthy meetings with them, but in practice the matter would not proceed much.

Eventually, a management came from whom I became completely hopeless. I described all the flaws in detail to the late Prince Muhammad bin Faisal in a private meeting, and also stated that if they were not rectified, I would have to excuse myself from rendering any further services. As

mentioned above, the new management paid no heed to rectification, so I finally resigned from my services. It so transpired later that the very name of this bank in Pakistan was also changed. It used to be called “Faysal Islamic Bank”. Presently, the very word “Islamic” has been removed from its name and it has become similar to other interest-based banks in terms of its name as well as mode of operation, and this is good in the sense that people could have been potentially deceived by the name, which would now be avoided.<sup>1</sup>

## **Founding of Meezan Bank**

After the failure of Faysal Bank’s experience in Pakistan, there was no trustworthy organization of Islamic banking in Pakistan. After some time, when I was one time returning from Bahrain to Karachi, my friend Mr Iqbal Ahmad Siddiqui mentioned during the journey: “A group from Bahrain wishes to establish an interest-free bank in Pakistan by the name of Meezan Bank. This bank would be established under the leadership of the honourable member of Bahrain’s royal family Shaykh Ibrahim Khalifa. Your services would be required for this”. I felt disheartened after the unpleasant experience with Faysal Bank so I did not promise anything at that time. Later when this bank was established, Mr Irfan Siddiqui was appointed its Chief Executive, whom I knew from long before and I was also aware of his religious temperament. He expressed, with utmost sincerity and seriousness, his intention to run this bank based on the teachings of Shariah, which was promising for me, and I accepted Chairmanship of its Shariah Board. Alhamdulillah he lived up to his intentions to a great extent, and the entire skeleton of the bank’s operations was formed according to my proposals. My son Dr Imran Ashraf (may Allah keep him safe) played a major role in keeping the bank on the right path. He drafted a competent team of about forty individuals to carry out effective supervision of the Shariah-based contracts and devising the

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<sup>1</sup> Now since a few years ago, this bank has again established a department called Islamic Banking and efforts are underway to once again make it a completely Islamic bank, with some scholars from among our colleagues supervising this. They informed that this time the management is sincerely endeavouring to do this. At the same time, as I shall mention ahead, Alhamdulillah now the State Bank also supervises the Shariah compliance of Islamic banks, so it is hoped that InshaAllah the current endeavour will prove successful.

various financing schemes. This team defined detailed rules for every kind of contract and bound the bank to following them. Thus, by the grace and favour of Allah Most High, the bank is running successfully, with its popularity growing day by day, so-much-so that it also received the award for being the best bank in Pakistan.

## **Association With Some Other Financial Institutes**

During the days that I was part of the Shariah Board of Faysal Bank, several other Islamic financial institutes also invited me. After Faysal Bank, it was perhaps Arab Banking Corporation (ABC) which first invited me, which also had its headquarters in Bahrain. Among the assurances they gave was the promise to not repeat the mistakes of Faysal Bank. The head of its Shariah Board was the author of *“Al-Fiqh Al-Islāmī Wa Adillatuhu”* Shaykh Wahba Zuhayli (may Allah have mercy on him), and later I also got my friend Shaykh Abdul Sattar Abu Ghuddah included. Despite some weaknesses, the mode of operation here was certainly relatively better. I therefore remained with them for many years, but later resigned due to the activities of Darul Uloom, etc., even though Shaykh Wahba Zuhayli (may Allah have mercy on him) said to me: “I shall resign as Chairman of the Shariah Board in your favour. You can work here as the Chairman”. However, I was unable to continue so could not fulfil his wish.

## **Global Banks Turning Towards Islamic Banking**

One of those days, the following incident took place: I was in Bahrain. The head of the largest bank there, Gulf Bank, was a white Englishman. He came to meet me in the hotel and said: “We wish to open an Islamic department (which is technically called a “window”) in our bank. Please guide us for this”. I asked him: “You are not a Muslim, so how did the thought of opening an Islamic window come to you?” He replied: “When we try to do business with our customers based on interest, they demand for Shariah-based financing”. I was pleased to hear this, that Alhamdulillah this kind of consciousness was developing in Muslim businessmen, and if this consciousness continued and increased with steadfastness, it could turn the tables. While I later declined to work with him, since the demand for interest-free banking was increasing among Muslims, now the prominent global banks had understood it to be a new and developing market.

Hence, most global banks such as Citi Bank, Hong Kong Shanghai Bank, Standard Chartered Bank, Saudi American Bank and others began opening interest-free departments in their larger banks. For this, one after the other, banks began contacting me to work in their Shariah Boards.

At that point, two kinds of thoughts kept me in a dilemma. On the one hand, the heart did not wish to work, in any capacity, in those global banks which had promoted the interest-based system of banking throughout the world, and I would feel disquietude at the thought that I should benefit them through my services. But there was another aspect to this. The avenues for promoting interest-free banking could also be opened up through them only. Secondly, our Muslim countries have a widely pervasive servile mindset through which it is relatively easier to promote concepts in them which the Western world considers acceptable. Preferring this aspect, I accepted membership in the Shariah Board of numerous global institutes.

With respect to this, a British company “Robert Fleming” contacted me saying that they wished to open a fund for shares of halal companies, similar to what the late Mr Muazzam Ali Shah had in mind. The common public and interest-free banks could take part in this. Since this work was lighter than the work involved in banks, I accepted this, and they formed a Shariah Board under my leadership, with my friend Dr Abdul Sattar Abu Ghuddah and Dr Nazeeh Hammad as its members. For this work, I had to undertake several trips to London and Luxembourg, but they resulted in good results. This company later liquidated and this work could not continue through it.

## **Citi Islamic Bank**

Among global banks, the first bank to come forward for interest-free banking was the world-famous “Citibank”. It did not merely establish an Islamic branch, rather established a separate organization by the name of “Citi Islamic Bank” which was also headquartered in Bahrain. Dr Nazeeh Hammad, Dr Abdul Sattar Abu Ghuddah and I were invited to accepted membership of its Shariah Board. Through working with them in the Islamic Fiqh Academy, I appreciated that both of them were well-versed in Fiqh. They started this work by making me the Chairman of the Shariah Board. A detailed skeleton of the preliminary work was drafted and work on it also began.

Since Citibank was a global institute, its businesses were very widely spread throughout the world. Thus, there were ever-new large-scale programs which had to be understood and moulded to be performed within the limits set by the Shariah, for which the work had to be carried out with great rigorousness and hard work. But Alhamdulillah, overall the work was done satisfactorily.

In those days, the organization thought of creating a fund similar to the one created by Robert Fleming, which would entail buying and selling the shares of companies. What happens in this kind of business is that if the income of some company coincidentally turns out to be impermissible and that impermissible income is not more than five percent of its total income, the impermissible profits earned from it are donated in charity without any intention of earning rewards, and thereafter the permissible income is distributed among the participants. Citi Islamic Bank was headquartered in Bahrain, and at that time, its head was a Pakistani-origin Memon individual. He insisted that the impermissible profit should not be donated to charity, rather it should be distributed to the shareholders, and the shareholders should be instructed to donate five percent of their profits in charity. When I refused to accept this point, he said that they were legally not allowed to keep any portion of the shareholders' profits undistributed.

Based on my previous experience at Robert Fleming, I was quite positive that when the procedure is explicitly stated in the fund's prospectus, there was no legal prohibition from donating the impermissible income on behalf of the fund. But he repeated the same legal point with complete certitude. At this, I asked him to consult a legal expert and to present a written reply which cites the relevant law.

After a few days, he showed me the letter of a legal expert. I noticed that firstly, this was written by a lawyer belonging to Citibank itself and not an independent lawyer. Secondly, the reply was also quite ambiguous with respect to the original question. At this I said: "We shall draft the question by ourselves. Please show us its reply from an unbiased and independent legal expert". When that reply came, it was confirmed that there was no such legal prohibition.

The reason why I insisted on this matter is that Shariah compliance of the fund could not be confirmed until it took care to purify itself from impermissible income. If only the shareholders were asked to donate the impermissible portion, there was a high chance for many shareholders not to act on this. When this legal point was also confirmed, I said to them: “Now we no longer trust that head, so I cannot work with him”. I thus resigned and came back.

I have written this incident because now MashaAllah quite a number of young scholars are working as advisors to numerous financial institutes. They should take care at all times not to be deceived by mere words of the management. Rather, whenever a legal impediment is mentioned before them, they should examine the relevant law by themselves and then make a decision whether there is a genuine legal hindrance or not, and if there is, then is it correct from a Shariah point of view to grant a leeway based on that legal hindrance?

### **An English Publication on Principles of Islamic Banking**

Until now, no such book had been published for Islamic banks that could serve as a reference for their contracts. Until then, for all Islamic banks, only the Fatwas of their *Hay'āt Al-Riqābah Al-Shar'iyah* (Shariah Boards) were used, and the banks were also supervised based on them. I felt that since the contracts of banks were mostly in English, there was a need for a book in English that could serve as a reference for them. In view of this need, I wrote a book titled “An Introduction to Islamic Finance” which described the permissible Islamic ways of financing, their basic commandments as well as conditions in detail in such a style as can be easily understood by banks’ lawmakers and staff. Gradually, this book actually took up the place of a trustworthy reference for Islamic financial institutes, and until the “*Ma'āyir Shar'iyah*” had not come into existence, this book continued to be used as a fundamental source. In the beginning, we had published it through our own publishing house “Idarat al-Maarif” in Karachi. Later, it was published in some Western countries, such as by a publisher in Holland, and was also available on the internet.

This book described the principles of financial matters. Later, my elder son Dr Imran Ashraf (may Allah keep him safe) added practical applications and case studies to it and compiled a more



comprehensive book, through which implementation of Islamic principles became even more easy for financial institutes.